

REMARKS**I. Status of the Claims**

Claims 1-27 are currently pending in the application. Of these, claims 1, 11, 21, 22, and 24-27 are independent.

II. Claim Objection

Claim 4 is objected because although there was no amendment, this claim was marked as “currently amended.” Applicant has amended the marking to correctly reflect the status of claim 4. Accordingly, reconsideration and withdrawal of the objection of claim 4 are respectfully requested.

III. Rejections under 35 U.S.C. § 103

Claims 1-21 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,023,686 to Brown (“Brown”) in view of U.S. Patent No. 5,812,545 to Liebowitz (“Liebowitz”). Claims 22-27 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Brown.

1. Claims 1, 11 and 21:

Independent claims 1, 11, and 21 recite features involving the transmission of a content item at a quality level that is based on a total collective payment. The cited references, individually or in combination, do not appear to disclose or suggest at least this claimed feature.

Brown is directed to an auction through an on-line bidding session with bid pooling. As described in Brown, the winner of an auction for a property is a bidding group with the largest total bid which exceeds the threshold value (i.e., the minimum prices). As is apparent

to those skilled in the auction arts, the threshold value in Brown is simply a RESERVE in which a sale does not go through unless a minimum price is met.

First, although Brown notes that a collective bid may be accumulated for “any type of property”, there is nothing explicit or implicit in Brown that teaches or suggests that property referred to in Brown encompasses content item or, more particularly, transmission of a content item, e.g., transmission of electronic content. This is further supported by the absence of any description of an approach or infrastructure in Brown to handle and/or transmit a content item. The Examiner’s rebuttal, such as on pages 9-10 of the Office Action, is not based on any objective rationale and is confusing since it alleges that “content delivery” is a property. How can the act of delivery or transmission be a property. Brown deals with the sale of property through an auctioning method, and not how such property is provided.

Second, there is no “proper” motivational basis for combining the references in the manner suggested by the Examiner. Brown describes an auction system in which the largest group bid in excess of the threshold (i.e., the RESERVE) is the winner. That is, in Brown, there is only one winner for a property. Moreover, if the threshold (i.e., the RESERVE) is not met, then the item is not sold even to the group with the largest bid. The use of a RESERVE is a conventional auction approach. As such, it is unclear what if any relevance the “rate tables” of Liebowitz has as to the threshold (i.e., the RESERVE) of the auctioning/bidding method in Brown. The motivational rationale provided in the Office Action (e.g., page 4) is not based on objective evidence or support and clearly does not take into account that Brown deals with auctioning (as noted above), whereas Leibowitz relates to the provision of communications services, such as at different transmission rates, based on a fee.

Further, specifically as to claim 21, this claim further recites “to compare a sum of the individual user payments to a collective earning threshold”. That is, a sum of individual payments (e.g., actual payment) is compared to the threshold, which is different than comparing of a “bid” or a “collective bid” to a RESERVE as in Brown.

In view of the foregoing, claims 1, 11 and 21 and their dependent claims are believed to be distinguishable over the cited references.

2. Claims 22, 24 and 25:

Independent claims 22, 24, and 25 recite features that involve the scheduling of a content item for transmission when a total collective payment is greater than or equal to a collective earning threshold.

As discussed above, Brown describes an auctioning method for selling property, and not how such property is provided or transmission of a content item. It necessarily follows that Brown is also silent as to the “scheduling” if a content item for transmission based on the claimed conditions. The Office Action does not address the feature of “scheduling” with reasonable particularity or where this is taught in the cited references. Accordingly, claims 22, 24 and 25 are distinguishable over the cited references.

Further, in the claimed inventions, the total collective payment is compared to the threshold, which is different than comparing of a “bid” or a “collective bid” to a RESERVE as in Brown.

In view of the foregoing, claims 22, 24, and 25 and their dependent claims are believed to be distinguishable over the cited reference.

3. Claims 26 and 27:

Independent claims 26 and 27 recite features involving the transmission of a content item in a manner that is based on a comparison between a total collective payment and a collective earning threshold. That is, the manner in which a content item is transmitted is based on a comparison between a total collective payment and a collective earning threshold.

As described above, Brown discusses an auctioning method for selling property, and not how such property is provided or transmission of a content item. Further, it necessarily follows that Brown is also silent as to the arrangement in which the manner in which a content item is transmitted is based on a comparison between a total collective payment and a collective earning threshold. The Office Action does not address the manner in which a content is transmitted is based on the claimed condition with any reasonable particularity or where this is taught in the cited references.

Further, in the claimed inventions, the total collective payment is compared to the threshold, which is different than comparing of a “bid” or a “collective bid” to a RESERVE as in Brown.

Accordingly, claims 26 and 27 are distinguishable over the cited reference.

4. Dependent claims 2-7:**A. Claim 2:**

Claim 2 recites that the step of defining a collective earning threshold comprises selecting a threshold value from a time-varying threshold function. That is, the threshold value is variable and is selected from a time-varying threshold function.

The Examiner contends that this feature is taught in Brown in column 8, lines 18-29. However, this cited portion describes the threshold as a “predefined” threshold, and is

clearly silent as to any operation of a selection of a threshold or a time-varying threshold or a time-varying threshold function (e.g., threshold varies according to time). The only mention of time relates to the length of the bidding session, not as to the threshold. Accordingly, claim 2 is further distinguishable over the cited references.

B. Claim 3-4:

Claim 3 recites that the further step of awarding a prize to one or more users according to a prize criterion. Claim 4 recites that the awarding step comprises awarding a prize to the user that has contributed the largest of the individual user payments.

The Examiner contends that the awarding feature is taught in Brown in column 8, lines 35-40. This cited portion simply describes that the determination of a winning bid is contingent on such bids exceeding a threshold (e.g., a RESERVE). Brown is silent as to awarding a prize which is separate from winning the auction for a property. Thus, Brown does not disclose or suggest the further step of awarding a prize. Accordingly, claims 3 and 4 are further distinguishable over the cited references.

Further, as to claim 4, the Examiner takes Official Notice that it's well known in the auction art to award prizes to users that have won the largest bid. The Examiner also asserts that one of ordinary skill in the art would know that Brown would award prizes to the largest contributor of a total collective payment bid because (1) Brown keeps track of the amount each bidder contributes to the group bidding and (2) users would not participate if one user would finish contributing for almost all the total collective payment unless that user is awarded with a prize that would compensate for what others users did not contribute.

Applicant respectfully traverses the Examiner's taking of Official Notice and requests the Examiner to provide objective support for this alleged well known fact. Further, as

best understood, the alleged well known art still does not address the claim language and confuses “prize” with the auctioned property (as noted above), and Applicant respectfully disagrees that one of ordinary skill in the art “would know” that “Brown would award prizes . . .” First, one of ordinary skill in the art would not know of the claimed feature since the feature is not inherent from the Brown disclosure which is clearly silent as to this subject matter. Second, one of ordinary skill in the art would not modify the teachings of the cited references in the manner suggested by the Examiner. The Examiner’s motivational rationale is clearly subjective and not based on any objective support either in the prior art or knowledge generally available to one of ordinary skill in the art.

Accordingly, claims 3-4 are further distinguishable over the cited references.

C. Claims 5-7:

Claim 5 recites that the step of transmitting the content item at a downgraded quality comprises reducing the resolution of images included in the content item. Claim 6 recites the step of transmitting the content item at an impaired quality comprises reducing the size of one or more images included in the content item. Claim 7 recites that the step of transmitting the content item at an impaired quality comprises increasing the distortion of audio signals included in the content item.

The Office Action does not adequately address these claimed feature with reasonable particularity. Notwithstanding that one of ordinary skill in the art would not combine the references as described above with reference to claim 1, both references are silent as to the particular claimed quality aspect of a content item, e.g., reduced image resolution, reduced image size or increased audio signal distortion. As acknowledged by the Examiner, Brown is simply silent as to these features. As best understood, Liebowitz simply describes a communications

service in which transmission rate of the communications service may be based on a fee table, which clearly does not disclose or suggest reduced image resolution, reduced image size or increased audio signal distortion.

Accordingly, claims 5-7 are further distinguishable over the cited references.

CONCLUSION

Based on the foregoing amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims and allowance of this application.

AUTHORIZATION

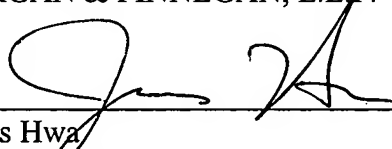
The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 13-4500, Order No. 4208-4076.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 13-4500, Order No. 4208-4076.

Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Dated: January 30, 2006

By: _____


James Hwa
Registration No. 42,680
(202) 857-7887 Telephone
(202) 857-7929 Facsimile

Correspondence Address:

MORGAN & FINNEGAN, L.L.P.
3 World Financial Center
New York, NY 10281-2101